

COMMISSIONERS APPROVAL

ROKOSCH 

GRANDSTAFF 

THOMPSON 

CHILCOTT 

DRISCOLL 

Date.....August 2, 2007

Members Present.....Commissioner Jim Rokosch,  
Commissioner Carlotta Grandstaff, Commissioner Alan Thompson, Commissioner Greg  
Chilcott and Commissioner Kathleen Driscoll

Minutes: Glenda Wiles

The Board met to continue their meeting in regard to filing a petition against the Board of Adjustments for the decision by the Board of Adjustment on the variance request for the Brooks Hotel. Also present were two members of the Board of Adjustment; Phil Connelly and William Hester. Civil Counsel Alex Beal and Planner Shaun Morrell were also present for this discussion as were numerous citizens.

It was noted the transcript of the Board of Adjustment meeting (when the variance request was granted) was not yet completed. Commissioner Rokosch stated in light of the lack of transcript, he did not feel the Commissioners could or should make a decision this morning. He noted they had closed public comment after Tuesday's meeting, but it is the Board's discretion to allow public comment this morning. There was discussion of how the public can receive the copies of the transcript when they are available. Citizens were asked to contact Glenda for copies which could be in the form of email/cd or actual transcript.

Commissioner Chilcott stated the content of the transcript is not the issue today. For him the issue is the application of public policy and how the Commissioners work with volunteer boards.

Commissioner Driscoll indicated she would like to ask questions of the two Board of Adjustments members whom were present.

Russ (the Developer) asked if this issue is re-opened to a public hearing, does everyone have to be notified. Alex stated the Board does not need a public process in order to enter into a lawsuit.

Jenny Stoddard was not present on Tuesday morning for the first round of public comment. She stated she has served on numerous volunteer boards and it all comes down to demeanor. There are some Commissioners she does not agree with 'but that is the deal so she follows their lead'. Now the Commissioners have a decision by a volunteer board, and Civil Counsel was present for the Board of Adjustment giving them advice on how to handle that variance request. She stated Montana Law requires a Board of Adjustments, and to second guess their decision is not correct. She stated the Commissioners should not undercut the Board of Adjustments every time they make a decision. The members were well prepared and it is irresponsible for the Commissioners to undercut them. One lawsuit could lead to another lawsuit. She stated if the Commissioners feel this variance request did not go their way, it is obvious how the Commissioners will act in the next two years. The '1 for 2' initiative was for smart growth, but variances are allowed under the law and the process was followed. Politically, the Commissioners need to move the county forward not cause lawsuits.

Curtis Cook stated the law provides safeguards. Appeals can occur by any citizen in the county. If this issue goes to the District Court, there are several things the court will look at. Without the transcripts there is no way to make a reasonable presentation to the court. He suggested the Commissioners continue this meeting, and then allow public comment after everyone has time to review the transcript.

Terry Polumsky stated Commissioner Chilcott had a good point. This is public policy. This volunteer board worked hard, and citizens have recourse, but it is inappropriate for the County Commissioners to sue their own board. This is frightening to her and she urged the Commissioners not to do this.

Barbara Kitchen stated her phone is ringing off the hook as most people do not know what the Commissioners are doing. She attended the Board of Adjustment meeting. Commissioner Rokosch was present at the Board of Adjustment meeting and requested the Board of Adjustments place a finding of fact in everyone of their decisions. They did that, and justified every vote. She stated the public is watching this and they are trying to figure out what the Commissioners are doing.

Commissioner Rokosch stated the conclusions of law and findings of fact are the heart and soul of this issue; in other words to see if the Board of Adjustments applied the criteria and developed the findings of fact in order to base their decision on, or was there an abuse of their discretion.

Phil Taylor stated the decision is whether to entertain the petition. He did not feel any more meetings are needed. He reviewed the taped minutes three or four times. He feels what they did is garbage and their findings are arbitrary, slanted for the developer and it will negate the interim zoning that is on the book. He stated this is simply a matter of policy decisions on this issue. He stated his group sent the Commissioners a memo several weeks ago on their findings of facts. One criterion was the owner did not want to mow weeds on three acres of ground. Phil stated this is a charade; the Board of Adjustments did not do what they were supposed to do. He advised the Commissioners if

they were to listen to the cd (taped minutes of the meeting) they will see they did not address the criteria. The county should be suing the Board of Adjustment because the Commissioners represent the citizens and the Board of Adjustment's decision is an injustice and the court should intercede. Phil stated people were told the interim zoning effort would go 'down the tubes' because it would be litigated to death, and they are almost right. His group spent a lot of money trying and succeeding in this interim zoning. He advised the Commissioners if they did not pursue this inaction court, then he and his group will dig deep and litigate this issue themselves. He advised the Commissioners their constituents are wondering what is going on. He stated they would ask them to review the facts, and then they will see what a travesty this whole thing is.

Jannie Summers stated she is flustered and read the editorial that was in the Ravalli Republic newspaper entitled "The Lid on Pandora's Box". She stated she agreed with this editorial and cautioned the Commissioners not to do just that.

Darryl Binkerd stated the editors come and go at the Ravalli Republic and they have slanted views that not everyone agrees with. He stated his goal is to look out for the people. He did not feel the Commissioners should file this petition against the Board of Adjustment; rather the Commissioners should fire everyone on the Board of Adjustments. He stated he has known Lee Foss (a member of this Board) for many years and Lee does not care what happens to this county as he is a real estate broker. Commissioner Rokosch interrupted and asked Darryl to speak to the case. Darryl stated when Commissioner Thompson took office he fired the Planning Board and replaced them with people he wanted in there. He told the Commissioners to forget the lawsuit and rather fire the Board of Adjustment.

Doug Soheren thanked Commissioner Rokosch for keeping them focused on the facts. He felt the whole issue is about the findings of facts. He stated the Board of Adjustments 'threw the facts out the window' and it is obvious they have an agenda. He asked the Commissioners to please petition the court to overturn their decision.

Bob Frost stated Ravalli County only has general government powers. This gives the Commissioners the right to act on the statutes, thus they are a subdivision of the state. He asked who the administrator was who denied the variance and asked if the records of this denial were given to the Board of Adjustments. He asked what statute allows the developer a reasonable return on his property. He asked if the members of the Board of Adjustment are required to take an oath of office. He asked how the Board of Adjustment could deny the public interest when the people voted for interim zoning. The people have rights and the Commissioners need to represent the people and those rights.

Commissioner Rokosch stated the Planning Office is the administrative entity to receive the variance request and notify the Developer he would need to seek a variance in regard to the interim zoning.

Planner Shaun Morrell stated this developer (applicant) asked for a variance request from the interim zoning. This applicant submitted a pre-application request form to the Planning Office and he was told they could not process this application.

Alex stated letters went to all applicants stating they need to apply for a variance due to the '1 for 2' interim zoning. Thus either way the application was submitted, it went to the right place.

Shaun stated this particular applicant was in the pre-application stage so he did not obtain a letter as others do.

Bob asked where the statutes say Planning is the administrator of zoning.

Alex stated there has to be an administrator and even if we never appointed Karen Hughes, the people still have to have a way to appeal the zoning. Everyone has to have a representative. We can debate the semantics of the administrator of the Zoning Board but the notion is there must be a remedy to the zoning procedure by way of variance requests.

Bob stated they need to follow MCA 76-2-222.

Curtis Cook stated there are two parts to this board 1) variances and 2) special exceptions which do not require an appeal. Variances need an appeal based on the decision. Certain things need to be done on variances such as transferring the file from the administrator to the Board of Adjustment. Thus there is a distinction between the two. In this case, he felt those statutes were not followed. The court will look not only at the findings of fact but the whole process.

Alex stated this discussion is now 'far afoot' from what this meeting is about. If they want to review how the Board of Adjustment was created they can do that, but he feels it is not necessary.

Commissioner Driscoll stated she wanted to know information on how the petition is filed. She felt maybe these issues should be worked out in court instead of with the Commissioners.

Alex noted it is the opinion of the County Attorney that the Board of Adjustment had been properly formed.

Commissioner Chilcott stated the Board of Adjustment was created with guidance from the County Attorney's Office. It was done legally as they are the experts in reviewing the Montana Code.

John Corbin stated the Commissioners should stipulate the Board of Adjustment was properly formed. His question is the finding of fact and if their decision should be overturned. He stated the Board of Adjustment overturned the Planning Office findings thus upsetting the applicant. He stated the members talked about weeds if the area was

not developed. He asked what that had to do with the findings of fact. John stated it only takes one issue to make the whole thing fall down. He supports Phil Taylor's comments, and felt these volunteers do not have the final say; it should be the Commissioners.

Russ Hunt (developer/applicant) addressed the Board of Adjustment by urging them not to quit no matter what decision is made here today. In regard to Phil Taylor, he was the first developer to go before the Board of Adjustment. It was their first meeting and he agreed 'they did not know all the ins and outs' but the County Attorney's Office was there to guide them.

Commissioner Driscoll asked Board of Adjustment Member Bill Hester for his overview of what happened at the variance meeting. Bill stated he heard about this Commissioner meeting and how they were contemplating a lawsuit. Because of that information he indicated he will not make any comment here today, because it is important for him to talk to his attorney first. He simply came here today to listen and find out the views of the Commissioners and public. He has not discussed this issue with Phil Connelly and thus he felt it is inappropriate to discuss the matter at this meeting.

Phil Connelly, Board of Adjustments Member, stated this was a tough variance request. He stated when he looked at the subdivision, there was not anything fundamentally wrong with it; it was a good project and close to facilities. But, they had criteria to follow which he felt bound to follow. The criteria was not necessarily what he likes, but it was not his job to substitute his judgment for what the law stated. He voted against granting this variance. The vote was one against and four for the variance.

Commissioner Driscoll asked Phil if 'he felt things were out of line on the decision' and did people understand their job. Phil stated he hates to talk about that. Commissioner Driscoll asked if he had conversations with other board members. Phil replied he did not.

**Commissioner Chilcott made a motion not to file a petition against the Board of Adjustment in District Court. Commissioner Thompson seconded the motion.**  
**Discussion:** Commissioner Driscoll stated she would like more information on the criteria the Board of Adjustments was to follow and how they came to their decision. She stated she does not want a lot of litigation to come out of their decisions. For her it is important to know if the law was not followed.

Commissioner Rokosch stated he was the only Commissioner to attend the Board of Adjustment variance request meeting. He urged the Commissioners to listen to the cd and or read the transcripts. He stated this will give them the necessary interpretation they need prior to making a final determination.

Commissioner Chilcott stated he appreciates the dedicated citizens when they take time away from their personal lives to assist the Commissioners. He noted the county has a professional and enthusiastic Planning Staff. He also noted this was the Board's first variance request. He felt they could provide some training in regard to the interpretation and findings of fact. He felt litigating their volunteer board is ludicrous. However, the

upside to filing the petition in District Court is the Commissioners would obtain some interpretation of the interim zoning itself. While this initiative gave the county some breathing room, the suit may also provide judicial review on the interim zoning. However, he does not want to sacrifice volunteer board members, thus he strongly objects to filing lawsuit against one of their own boards.

Commissioner Rokosch mentioned the drafters of the zoning. Commissioner Chilcott stated this did not have anything to do with the drafters.

Phil Taylor stated he was a drafter of the initiative but he never admitted he did not know what he was doing. Phil stated Commissioner Chilcott manipulates the facts to suit himself. In this settlement agreement, people will be surprised at Commissioner Chilcott and we will see instigators. He stated he continually hears Commissioner Chilcott embellish the facts.

Commissioner Driscoll asked about county liability. Alex stated any decision can be appealed by anyone. In terms of financial liability, he does not see any financial liability in terms of attorney fees or in regard to failing to supervise a board.

Commissioner Thompson stated decisions by all boards are subjective including the Commissioners. He stated there are members of the community that make threats against the Commissioners, plus they say we make and take money for our decisions. He stated he is sick and tired of that and someone had asked for the Senate to investigate him. He stated 'they should go ahead and do it, as he is sick of that kind of talk'.

Commissioner Thompson stated the Board of Adjustment has to make determinations. The minutes of that meeting read "a number of children were killed in this area" but that is not correct. These are allegations and comments that are made to inflame the public. He felt Will (a Board Member) had a long discussion about growth and explained good thoughts for his decision. He stated this newly-formed board had a difficult project to render their first decision on. He stated to file a lawsuit or petition on the one decision they made hits him wrong. Are the Commissioners going to question the Board of Health, Open Lands, and Streamside Setback Committee? Will we file lawsuits against them? He suggested they obtain some history on this board before another discussion like this occurs again.

Commissioner Driscoll stated they are not going back through the boards, but rather get back on subject. The Commissioners have been trained over the past several weeks on subdivisions, and just because we do not like it, does not mean we can not follow the law. It is "like" versus "law". She appreciates what Russ is proposing to build, but is it not within the law.

Commissioner Rokosch stated the Commissioners are a quasi-judicial board and the only avenue they have to look at the Board of Adjustment's decision is through the court process.

Commissioner Grandstaff stated she did not play any role in appointing the Board; she did not go to the meeting or listen to the audio of the meeting, and she is reluctant to sue one of their volunteer boards. She has heard from people the members of the Board of Adjustment are 'cavalier' in their attitude, but she does not know that. She would like more information before she makes a decision.

Commissioner Chilcott stated it is like raising kids; you don't just take them out and beat them the first time they do something wrong. Rather, this is an opportunity to do some training, which is the first way to deal with a problem. Filing a lawsuit is not the best way to handle any potential problem.

Alex stated the Commissioners do not have any legal obligation to file suit even if their decision was horribly callused. They can bring suit if they want to but why they bring suit is up to them. He stated the Commissioners may feel they have a moral obligation, but they do not have a legal obligation in his opinion.

Commissioner Driscoll stated the Commissioner's obligation is to train the Board of Adjustment on how to find the findings of fact. The new Commissioners received training too.

Commissioner Grandstaff stated she likes Commissioner Chilcott's ideas of training. The Commissioners don't always take the Planning Staff's recommendation; we stumbled through the first few subdivisions also.

Commissioner Rokosch stated they made a decision without any findings of fact. He also noted the need to review the positive findings not just the negatives.

Commissioner Grandstaff stated she might feel bad about their variance approval if the project was bad, but it was not a bad project for the area.

Commissioner Rokosch stated they need to look at the interim zoning because the members of Corvallis need input in the final comprehensive plan. When the Commissioners review the transcripts they will find testimony from the citizens about business locations versus residential and whether this posed a hardship is germane.

Commissioner Grandstaff stated she understands the Board of Adjustments must exist for variance requests which include the '1 for 2'. Commissioner Rokosch replied those variances must be met.

**Commissioner Chilcott called for the question on his motion. Commissioner Chilcott and Commissioner Thompson voted 'aye'. Commissioner Grandstaff and Commissioner Rokosch voted 'nay'. Commissioner Driscoll stated she would like to table this and review the transcript; but if pressed for a vote she votes 'aye'. Motion carried.**

Commissioner Rokosch stated if there are changes in this motion, it needs to be done before August 9<sup>th</sup> with proper 48 hour notice.

Minutes: Beth Farwell

In other business the Board met with Fred Thomas the Insurance Agent of Record for the county.

Fred discussed the deductibles and the premiums of the Ravalli County Insurance Policy for 2007-2008. He discussed the coverage for general liability and what instances would fall under that category. Fred explained the aggregate portion of the general liability category.

Commissioner Rokosch asked Fred to explain the Federal Liability category. Fred replied MACo provides a higher liability coverage. It is General Liability in Federal Court. Commissioner Grandstaff questioned when a case would fall from basic General Liability to Federal Liability. Civil Counsel Alex Beal replied it is mostly for a jury pool and must prove their cause of action.

Fred stated the MACo policy is a manuscript policy that is different than comprehensive general liability form. It still follows and has the basic general liability with the exclusions. Discussion followed.

Commissioner Rokosch asked if attorney fees and court costs are included in the coverage. Fred replied not unless it is awarded from the case.

Citizen Jack Saunders asked if this was a bid process. Commissioner Grandstaff replied no.

Fred discussed the Auto Liability category. Commissioner Rokosch asked if it would cover an employee operating their personal car for county purposes. Fred replied it would be up to the employee's insurance carrier to cover those costs. Alex asked if the auto coverage is fleet or individual. Fred replied it is covered as a fleet. Commissioner Driscoll asked Fred if it was possible to look at an outside source for coverage for land use lawsuits. Fred replied yes, however cost would be an issue.

Fred discussed the remaining categories. He stated he would like to implement a checklist for departments for their fiduciary processes. This is in compliance with the recent embezzlement cases. The Board agreed.

Fred presented a graphic interpretation of the 'pool' (the number of counties/cities covered) mechanism. He explained where the County sits in this pool. He discussed flood, earthquake and other liabilities within the pool. Discussion followed regarding how the premiums affect the pool and how the pool is subject to deductibles. Fred

indicated how there is a back-up plan to the pool. The Board thanked Fred for his time and for his presentation.

In other business, the Board met with Bitterroot Humane Society for adoption of the Short Term Impoundment Agreement. Bitterroot Humane Society Board Chair Sue McCormack and Ravalli County Animal Protection and Control Board Chair Peg Platt were present.

Sue gave a brief overview of the agreement. Civil Counsel Alex Beal stated he had reviewed the agreement and made changes where applicable.

Commissioner Chilcott questioned the hiring of an Animal Control Officer. Sue replied she would like to request the officer be placed at the Sheriff's Office. Brief discussion followed regarding where to place the officer.

Commissioner Chilcott asked for clarification regarding the euthanasia policy. Sue replied the policy listed in the agreement is for an aggressive animal that would be considered un-adoptable. Discussion followed regarding dog bites and rabid animals.

Commissioner Driscoll requested Peg's option on the agreement. Peg replied; in not knowing what the numbers are going to be, she would need to get the Animal Control Board's concurrence before entering into a financial contract. The Board agreed to further discuss the financial support of the agreement during the BRHA budget deliberation.

The Board met for a continuation of the Salary Compensation Board meeting with Skip Rosenthal. Present were County Attorney George Corn, Clerk & Recorder Regina Plettenberg, and Salary Compensation Board member Jim Tadvik.

Commissioner Grandstaff asked how salaries can be determined when the projected revenues have not been estimated. Skip replied it is a recommendation from the Salary Compensation Board pending budget approval. He based the salary increases on 3.2% COLA. He reviewed and discussed with the Board the suggested increase for Deputy Salaries and how it was calculated.

Skip reviewed the salary increases for elected officials based on 3.2% COLA projected for FY 2008. He explained how those figures compared to neighboring counties.

Commissioner Chilcott stated the County Attorney Association defines a state wide perspective for attorneys. What has always been the discussion is defining the target and looking at the revenues.

Commissioner Thompson stated they had looked at this when the legislature first put this Board into effect. At that time it was 15% spread over three years. The Salary Compensation Board froze it on the second year which was a mistake. Since then it has been brought up to a four year period.

Jim Tadvik stated his recommendation is to increase elected official salaries based on the 3.2% COLA.

Commissioner Grandstaff questioned increasing salaries just for the employees, not the elected officials. Skip replied there are elected officials who have deputies tied to their salaries. Discussion followed.

Commissioner Rokosch confirmed the majority recommendation is for the 3.2% COLA.

Commissioner Driscoll asked if the newly elected Commissioners could not take the 3.2% increase. Skip replied no, it has to be across the board as there are three things to consider before making a decision. One is the 3.2% COLA increase to the base salaries, Two would be the contribution to the county (longevity), and three the inclusion of insurance benefits.

Jim Tadvik suggested making three separate recommendations so the Board may vote on them individually.

Skip added the coroner expense should also be taken into consideration when reviewing the Sheriff's salary. The coroner expense has not been increased for quite awhile. Regina stated the dual office of Clerk & Recorder and Elections Official should also be considered. Discussion followed regarding the number of deputy coroners.

Commissioner Rokosch reviewed the considerations with the Board. It was agreed to increase the base pay of 3.2% COLA. It was agreed to increase the County Attorney pay 3.2% with state insurance benefit, and increase longevity to bring the salary to where it should be. Commissioner Rokosch asked the Board to discuss possibly increasing coroner's pay. It was determined to not increase coroner's pay at this time.

**Jim Tadvik made a motion to make the recommendation to the Board of Commissioners to increase base salaries of elected officials to 3.2% COLA and bring the County Attorney salary up based on longevity. Commissioner Driscoll seconded the motion, all voted 'aye'.**

The Board met with Gary Wiley, Fair Manager to discuss road infrastructure at the fairgrounds. Gary stated he had received numerous complaints about the road conditions throughout the fairgrounds. He stated people confined to wheelchairs were having a hard time maneuvering throughout the grounds.

Gary stated he was open to suggestions from the Board. Paving was discussed along with adding handicap accessible pathways. Commissioner Driscoll suggested special ADA gravel that is compressed. She also suggested having a walk through by the Handicapped Association. Commissioner Thompson suggested compressed gravel with dust abatement. He then asked Gary what he would like done. Gary replied he would like a

path of oiled material rather than asphalt. The Board was in agreement against paving. Commissioner Chilcott suggested going ahead with chip sealing. Discussion followed.

**Commissioner Driscoll made a motion to approve the chip sealing of the fairground area from the south gate to the men's bathroom and from the west gate to the grandstands. Commissioner Grandstaff seconded the motion, all voted 'aye'.**

The Board met for the following administrative issues:

The first issue being signatures required on OEM Statement of Work. Office of Emergency Services Coordinator Ron Nicholas stated half of his budget comes from the State government. He is required to do numerous tasks which include and are not limited to planning, updates, attend district meetings and continue education. He is required to submit an OEM Statement of Work along with his annual budget to the State for funding.

**Commissioner Chilcott made a motion to sign the OEM Statement of Work. Commissioner Thompson seconded the motion, all voted 'aye'.**

The second issue is for the approval of Minutes for May 22<sup>nd</sup>, 2007. **Commissioner Chilcott made a motion to approve the minutes of May 22<sup>nd</sup>, 2007 as presented. Commissioner Grandstaff seconded the motion, all voted 'aye'.**